

\*\*E-Filed 7/22/2009\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

CHAU DANG,

Petitioner,

v.

EDWARD ALMEIDA, JR., Director of the  
California Department of Corrections,

Respondent.

Case Number C 03-2699 JF

ORDER DENYING MOTION FOR  
RECONSIDERATION

[re: docket no. 34]

On June 10, 2003, Petitioner Chau Dang (“Dang”) commenced the instant action by filing a petition for a writ of habeas corpus; Dang asserted *inter alia* an Eighth Amendment claim that his sentence of twenty-seven years to life was disproportionate to his crime of possession of cocaine for sale. On January 3, 2005, this Court denied the petition and entered judgment. Dang appealed that judgment. This Court denied Dang’s motion for a certificate of appealability. He then moved for a certificate of appealability in the Ninth Circuit, which motion was denied on October 25, 2005. The mandate was filed the following day. On January 19, 2006, the Ninth Circuit denied Dang’s motion for reconsideration and closed the appellate file.

1 More than three years later, Dang has filed a motion for reconsideration of this Court's  
2 judgment pursuant to Federal Rule of Civil Procedure 60(b). He asserts that new Ninth Circuit  
3 authority supports his claim that his sentence constitutes cruel and unusual punishment in  
4 violation of the Eighth Amendment.

5 This Court lacks jurisdiction to grant Dang the relief he requests. The appellate court's  
6 decision rendered the judgment final; this Court may conduct further proceedings only if  
7 explicitly authorized by the appellate court's mandate. *See United States v. Thrasher*, 483 F.3d  
8 977, 981-82 (9th Cir. 2007). In this case, the mandate did not remand any portion of the case to  
9 this Court. Accordingly, Dang's motion for reconsideration is DENIED.

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15 DATED: July 22, 2009

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JEREMY FOGEL  
United States District Judge

1 Copies of Order served on:

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